

EXHIBIT D

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 05-44481

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In the Matter of:

DELPHI CORPORATION,

Debtor.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

July 19, 2007
10:08 AM

B E F O R E:
HON. ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

HEARING re Debtors' Motion for an Order Under Section 105 and
363 Authorizing Implementation of Key Employee Compensation
Program

HEARING re Motion for an Order Authorizing Official Committee
of Unsecured Creditors to Prosecute Debtors' Claims and
Defenses Against General Motors Corporation and Certain Former
Officers of the Debtors

HEARING re Ex Parte Motion for Order Authorizing Official
Committee of Equity Security Holders to File Under Seal
Supplemental Objection to the Motion for an Order Authorizing
Official Committee of Unsecured Creditors to Prosecute Debtors'
Claims and Defenses Against General Motors Corporation and
Certain Former Officers of the Debtors

1 THE COURT: That's fine. We just have the Furukawa
2 matter and then the --

3 MR. BUTLER: And the claims objections. It shouldn't
4 be a much longer time. We're just trying to get --

5 THE COURT: The omnibus claim objection. Okay.
6 That's fine. So I'll come back at, say five of eleven.

7 MR. BUTLER: Thank you, Your Honor.

8 THE COURT: Thank you.

9 (Recess from 10:48 a.m. until 10:58 a.m.)

10 THE COURT: Please be seated. Okay, back on the
11 record in Delphi.

12 MR. BUTLER: Thank you, Your Honor. Your Honor, we
13 have three contested matters on today's agenda. The first is
14 the Furukawa Electric relief from automatic stay, a contested
15 matter at docket number 7410. Mr. Berger represents the
16 company in connection with this contested hearing and I will
17 cede the podium to him and to counsel for Furukawa.

18 THE COURT: Okay.

19 MR. MCELWEE: Michael McElwee for Furukawa, Your
20 Honor. May I proceed?

21 THE COURT: Yes. I was just going to say, you should
22 go near a microphone.

23 MR. MCELWEE: Oh, I will. Given the amount of
24 briefing that's been done in this case, Your Honor, I'd like to
25 restrict myself to really two basic points and they are these.

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1 First question is, did Delphi present its 25 million dollar
2 breach of warranty claim to this court in a procedurally
3 correct way. And the second question is, even if Delphi did
4 present its 25 million dollar claim in a correct way, do any of
5 the traditional convenience factors justify adjudicating that
6 case in New York as opposed to Michigan. We think these issues
7 are related for reasons that I'll explain.

8 It is useful, I think, Your Honor, to mention what
9 really are many of the undisputed facts in this case. It's
10 undisputed that Delphi filed its 25 million dollar claim
11 against Furukawa in the state court in Michigan. It's
12 undisputed that they filed that law suit approximately eleven
13 months before they sought protection under the Bankruptcy Code
14 in this court. It's undisputed that that case raises only
15 state law claims. It's also undisputed that Furukawa
16 Corporation and Delphi Corporation are both Delaware
17 corporations and both have their headquarters literally within
18 approximately thirty miles of each other in the suburbs of
19 Detroit.

20 Virtually, every fact that the case has applied to
21 determine the convenience of litigation warrants litigating
22 this case in Detroit or in the Detroit area and not in the
23 Southern District of New York. Both parties are in the suburbs
24 of Detroit. Literally all of the documentary evidence is in
25 Detroit. All of the physical evidence is in Detroit. The

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1 lawyers who represent the parties in the Michigan case are both
2 from Michigan. There really is none of the convenience factors
3 that would warrant transferring the case here. Which raises
4 the question how then did Delphi justify filing a duplicate
5 case in this bankruptcy proceeding.

6 THE COURT: Well, could -- maybe I misunderstand the
7 current state of the litigation here but aren't I right that a
8 claim was filed here by Furukawa for breach of contract, the
9 two Furukawa entities, --

10 MR. MCELWEE: Furukawa --

11 THE COURT: There was an objection to the claim.

12 MR. MCELWEE: Yes.

13 THE COURT: There've been or there was at least one
14 meet and confer and maybe more meet and confer sessions after
15 Furukawa responded to the objection. And Delphi has provided
16 its issues list, right?

17 MR. MCELWEE: That's correct.

18 THE COURT: Delphi has not asserted a counterclaim
19 yet, has it?

20 MR. MCELWEE: Well, in its issues list, it very
21 specifically indicated that it wanted the Court to decide its
22 25 million dollar claim here.

23 THE COURT: All right. But it has not teed up the
24 counterclaim for me yet, right? I don't normally get the --
25 the issues list is really for the parties.

1 MR. MCELWEE: Well, Delphi has indicated that it
2 intends to proceed.

3 THE COURT: But it hasn't done that yet, right? And
4 that's an important step because when a debtor formally asserts
5 a counterclaim as part of an objection to a claim, that
6 triggers under Bankruptcy Rule 3007 the adversary proceeding
7 rules.

8 MR. MCELWEE: Correct.

9 THE COURT: That doesn't seem to have happened yet.

10 MR. MCELWEE: Well, if there is no claim pending here
11 on this twenty-five million dollar breach of warranty claim by
12 Delphi in this court, then this is really a very different
13 proceeding today.

14 THE COURT: Well, there's an objection to your claim
15 and there may be a res judicata effect or a collateral estoppel
16 effect as a result of the litigation of that objection. But I
17 just wanted to make sure I understood the current procedural
18 context that I'm operating under.

19 MR. MCELWEE: Well, all of that's right. I mean, I
20 do think some of the details matter for the two. There was the
21 third omnibus objection where Delphi objected only on a books
22 and records basis to Furukawa's claim. They raised no other
23 objection in that third omnibus objection to Furukawa's claim.
24 They then asserted in their response and in the description of
25 the issues in connection with the response that they were going

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1 to raise not a books and records objection but that the claim
2 itself lacked merit on the substance of the claim, which is
3 very different than the books and records objection they
4 originally submitted. And when they submitted that proposal to
5 the Court, they indicated in the proposal that they want the
6 Court to decide the twenty-five million dollar claim that's
7 pending in Michigan. Now you are correct, that might not
8 constitute the correct way of placing that claim in front of
9 the Court. In fact, that's one of the points we argue. But
10 that nevertheless is clearly what Delphi's intention is in this
11 case.

12 THE COURT: Okay.

13 MR. MCELWEE: So our point is this. That if Delphi
14 wants to initiate duplicate litigation in New York that it
15 already has on file in Detroit, it should file a removal
16 petition under Section 1452. It should not attempt to append
17 that claim as part of the claims objection procedure under the
18 third omnibus objection.

19 THE COURT: But isn't it just a flip side of -- they
20 terminated the contract --

21 MR. MCELWEE: That's correct.

22 THE COURT: -- because they say your clients breached
23 the contract. You filed a proof of claim saying they breached
24 the contract by terminating it. It's the flip side, isn't it?

25 MR. MCELWEE: That's correct. And we had to file

1 that proof of claim by the bar date or the allowance of our
2 claim in state court would be barred under the claims
3 adjudication rule, procedures under the Code.

4 THE COURT: But the Second Circuit's been pretty
5 clear that that doesn't matter as far as the bankruptcy court's
6 jurisdiction or whether the claim litigation is core or the
7 like, does it?

8 MR. MCELWEE: That's true. The courts have held that
9 that doesn't matter in terms of determining the court's core
10 jurisdiction. But it does matter in terms of the voluntary
11 abstention standards. I mean, under the voluntary abstention
12 standards, this case is pending in state court. Furukawa has
13 the right to a trial by jury and all of the convenience factors
14 warrant maintaining the case in the Eastern District of
15 Michigan

16 THE COURT: Having filed the claim, doesn't the jury
17 trial right go away?

18 MR. MCELWEE: -- rather than the Southern District of
19 New York. Excuse me, Your Honor?

20 THE COURT: Having filed the claim doesn't the jury
21 trial right as to breach go away?

22 MR. MCELWEE: If the case comes here it does. Not if
23 it stays in state court.

24 THE COURT: Well, but the case is here because the
25 claim is filed.

1 MR. MCELWEE: Excuse me, Your Honor?

2 THE COURT: But the issue is here because the claim
3 is filed. The claim of breach.

4 MR. MCELWEE: There is a claim here and the question
5 then is whether the Court will allow the case to be adjudicated
6 in Michigan --

7 THE COURT: But all I'm saying on the jury trial
8 point, having filed a proof of claim here, I can try the case,
9 right? I can try the breach of contract case asserted in the
10 proof of claim?

11 MR. MCELWEE: If there is an objection made on the
12 basis that the contract is unenforceable or that we breached
13 the warranty, that's correct.

14 THE COURT: Okay. Okay.

15 MR. MCELWEE: So, essentially, our argument, Your
16 Honor, is that if you look at what Delphi offered to justify
17 presenting the case here even if it's not properly filed here,
18 is that it gets to adjudicate its twenty-five million dollar
19 claim under the Court's December 6th, 2006 procedural order
20 which is an order that limits the parties to one hour each and
21 to not calling parties --

22 THE COURT: But you know it doesn't do that. You've
23 read the --

24 MR. MCELWEE: I would presume not. But if you look
25 at their papers, there's no other justification for their

1 motion.

2 THE COURT: Well, I assume at the meet and confer you
3 discussed, as paragraph K on page 14 of the procedures makes it
4 very clear you're supposed to, modifications to deal with the
5 specifics of the claim. I assume you discussed that at the
6 meet and confer session.

7 MR. MCELWEE: Well, that's correct. I think the two-
8 hour hearing is plenty fine to adjudicate the original books
9 and records objection that they made. It's not adequate to
10 deal with their twenty-five million dollar counterclaim.
11 That's our point.

12 THE COURT: Well, is it adequate to deal with the
13 breach claim that your client asserted?

14 MR. MCELWEE: Clearly not. And if they were to
15 present an objection to the claim outside the context of the
16 third omnibus objection, the Court would have to deal with that
17 question. But the third omnibus objection was only a books and
18 records objection. It was not an objection to the substance of
19 the claim.

20 THE COURT: You don't think you've had adequate
21 notice of the basis for their objection?

22 MR. MCELWEE: They have indicated in their
23 description of the issues they intend to present, they intend
24 to present those breach of claims to the Court. They've also
25 indicated clearly they want them resolved under the two-hour

1 limitation under the December 6th order.

2 THE COURT: Is that right, Mr. Berger?

3 MR. BERGER: Your Honor, in fact we have discussed
4 paragraph 9(k) of the procedures order and a proposed
5 modification of the discovery, time before Your Honor, number
6 of witnesses, confirmed to Furukawa that if depositions need to
7 happen in Michigan we'll do depositions in Michigan. Documents
8 have already been passed back and forth. All we're talking
9 about happening here is what Your Honor has observed, is a
10 trial on the breach issue. We're fully willing to be
11 accommodative on those other issues.

12 THE COURT: Have you discussed the mediation that's
13 contemplated by the procedures order?

14 MR. BERGER: Not yet, Your Honor. I'm going to be
15 careful about how I describe negotiations other than to say
16 that we were approaching that issue and haven't had response to
17 that.

18 THE COURT: Am I right that from the papers that
19 that's a first step in the -- if the matter were to be brought
20 to Michigan, mediation is a first step?

21 MR. BERGER: Absolutely, yes, Your Honor.

22 THE COURT: Okay. All right. I guess I don't
23 understand why this isn't just a delay tactic.

24 MR. BERGER: Again, I'm having a hard time hearing
25 you.

1 THE COURT: I don't understand why this motion by
2 Furukawa isn't just a delay tactic. You're -- it seems to me
3 you're on full notice of the claim objection. The claim
4 objection procedures contemplate -- and if the debtor for some
5 reason doesn't live up to them you can come back to the court
6 and say they're not living up to them -- adjustments to deal
7 with the particular aspects of the litigation that may require
8 more than the streamlined procedures that generally apply. And
9 the order provides for the very type of mediation that would be
10 the first step in the place where you want to go. And you're
11 wanting to put that off. I don't -- why isn't this just a
12 delay tactic?

13 MR. MCELWEE: Because the case in the state court was
14 pending for eleven months before the bankruptcy filed --

15 THE COURT: And what's happened in it? Have they had
16 the mediation?

17 MR. MCELWEE: We have not had mediation yet in state
18 court --

19 THE COURT: Have they had any discovery?

20 MR. MCELWEE: Yes. We're completed with written
21 discovery, interrogatories --

22 THE COURT: Have you asserted the counterclaim?

23 MR. MCELWEE: We couldn't assert the counterclaim
24 because of the automatic stay.

25 THE COURT: And you've had any -- what fact discovery

1 have you had?

2 MR. MCELWEE: Excuse me, Your Honor?

3 THE COURT: What fact discovery have you had?

4 MR. MCELWEE: We've completed all of the written
5 discovery, interrogatories have been exchanged, document
6 requests have been exchanged, we're tying up the last details
7 about the exchanging of certain engineering reports that are
8 important to the outcome of the case. And we're ready to start
9 depositions.

10 THE COURT: Has the court had any involvement in the
11 matter?

12 MR. MCELWEE: The court has had involvement. I'm not
13 sure exactly what the court means. But the court has entered a
14 pre-trial order. It's established deadlines. The parties have
15 agreed to extend those deadlines from time to time. The courts
16 have sort of --

17 THE COURT: So it's been pending for how long?

18 MR. MCELWEE: It's been pending since, I think, late
19 October of 2005.

20 THE COURT: Has there been any activity since the
21 petition date?

22 MR. MCELWEE: Very little since the petition date.
23 The case has been consistently adjourned since the petition
24 date because Delphi represented at the parties that it was too
25 busy with its reorganization to attend the case.

1 THE COURT: Well, why would it be going forward in
2 any event given the automatic stay?

3 MR. MCELWEE: Well, it is an affirmative claim filed
4 by Delphi in state court. There isn't any automatic stay that
5 prevents the case from going forward.

6 THE COURT: It was pre-petition.

7 MR. MCELWEE: Excuse me, Your Honor?

8 THE COURT: It's pre-petition but there's been no --
9 there's been very little activity since the petition date, you
10 say?

11 MR. MCELWEE: It's been adjourned several times since
12 the petition date because Delphi has told us they don't have
13 the time to attend to the case because they're so busy with
14 their reorganization.

15 THE COURT: Okay. And there's been no counterclaim
16 asserted?

17 MR. MCELWEE: No. The counterclaim was asserted by
18 way of a proof of claim filed in this case.

19 THE COURT: How could you have completed document
20 discovery if you haven't asserted the counterclaim?

21 MR. MCELWEE: Because we're producing and discovering
22 documents related to Delphi's affirmative claims against
23 Furukawa.

24 THE COURT: Okay.

25 MR. MCELWEE: That's really all I have, Your Honor.

1 THE COURT: Okay.

2 MR. MCELWEE: Thank you.

3 MR. BERGER: Your Honor, I'll be very brief. The
4 reason that our omnibus claim objection was a books and records
5 objection is that we didn't have anything on record as an
6 obligation to Furukawa. Furukawa never filed a counterclaim in
7 the state court action. It filed its counterclaim by way of
8 the proof of claim. I think as Your Honor has observed from
9 our papers and from the comments I hear today, there is, from
10 the debtor's opinion, no way to adjudicate the claim objection
11 without consideration of Delphi's defense, which Furukawa must
12 have anticipated to have been our affirmative claim against
13 Furukawa.

14 The action was stayed. It did not proceed. The
15 debtors chose instead to challenge the Furukawa claim as part
16 of the claim objection process. I think what Mr. McElwee is
17 trying to articulate to Your Honor is that a part of what I
18 represented to the Court the last time I was here is that we
19 worked through the Memorial Day weekend to get through
20 confidentiality issues pertaining to certain engineering
21 reports. We've agreed to confidentiality. We provided those
22 engineering reports to Furukawa. That's the document
23 production that's been going on. We heard nothing since two
24 days after that weekend.

25 THE COURT: I'm sorry. So the document production

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1 was

2 MR. BERGER: In connection with the claim objection
3 proc --

4 THE COURT: -- in connection with this claim
5 objection not the

6 MR. BERGER: Here, Your Honor.

7 THE COURT: -- Michigan action?

8 MR. BERGER: Yes.

9 THE COURT: Is that right?

10 MR. MCELWEE: No. We asked for the -- they're called
11 (indiscernible) reports. We asked for both of those reports in
12 our state court discovery. Delphi consistently indicated that
13 they refused to supply the report because they were
14 confidential. We agreed to a protective order in the state
15 court case to facilitate the production of those reports. They
16 still weren't produced. So then we engaged in lengthy
17 negotiations with Delphi to get the documents produced. But I
18 was operating under the assumption given that lengthy history
19 that those documents were produced in the context of the state
20 court case not in the bankruptcy case.

21 THE COURT: Notwithstanding the discussions that
22 resolved this were done as a result of the meet and confer
23 sessions under the claims procedure order?

24 MR. MCELWEE: We did have meetings under the claims
25 procedure order, that's correct.

1 THE COURT: Okay.

2 MR. MCELWEE: The parties then conferred as part of
3 the --

4 MR. BERGER: Your Honor, I have nothing left to
5 address concerning statements that Mr. McElwee said. I think
6 our papers are clear. We think this is a core proceeding. We
7 don't think that there's any basis for abstention. There's no
8 basis for relief from the automatic stay. If we need to, we
9 will confront abstention issues in connection with removal or
10 counterclaims under 157(b)(2)(C). But I did want to finish my
11 statement by referring to the agreement of confidentiality. We
12 produced those documents two days after that holiday weekend.
13 We heard nothing in exchange until forty-eight hours ago. And
14 we got a letter from Mr. McElwee for the first time identifying
15 eight witnesses. So we've joined in Your Honor's observation
16 that, at least from the debtors' perspective, this is just
17 sidewise movement. We'd like to move forward, agree on a
18 discovery schedule, take depositions wherever it's convenient
19 for the parties and then come back to Your Honor and have this
20 claim resolved.

21 THE COURT: Okay. Well, when you say this claim, let
22 me make sure I understand that. When you say this claim, you
23 mean the claim that Furukawa has filed?

24 MR. BERGER: Yes, Your Honor. But as part of that,
25 Your Honor, we think, would have to consider the affirmative

1 claim asserted by Delphi against Furukawa. I understand the
2 procedural issue whether or not, not that I doubt that, in the
3 context of a claim objection process Your Honor could be asked
4 to enter a judgment for an affirmative monetary recovery
5 against Furukawa.

6 THE COURT: Well, you can join the objection. You
7 could --

8 MR. BERGER: I could.

9 THE COURT: You could with the demand for relief, you
10 know, affirmative demand for relief. But that hasn't been done
11 yet, I gather.

12 MR. BERGER: It has not been yet but I think that it
13 could happen and one of the things we would obviously explore
14 is 157(b)(2)(C) which expressly provides that counterclaims by
15 the debtor against parties that file claims in the estate can
16 be considered to be core. But we're not there yet, Your Honor.
17 We're in a claim objection process.

18 THE COURT: Okay. So right now, the process you're
19 dealing with is one where you, simply, on the merits or through
20 a settlement, want to defeat the proof of claim that's been
21 filed for breach?

22 MR. BERGER: That's right.

23 THE COURT: You're reserving your rights as to
24 whether that may at some point translate through res judicata
25 or collateral estoppel or some other preclusive doctrine on the

1 merits --

2 MR. BERGER: Correct, Judge.

3 THE COURT: -- of the affirmative relief that you
4 think that you may be entitled to.

5 MR. BERGER: That's correct, Judge.

6 THE COURT: And you're reserving your rights whether
7 you want to join a request for affirmative relief with the
8 claim objection?

9 MR. BERGER: That is correct, as well, Your Honor.

10 THE COURT: Okay.

11 MR. MCELWEE: Can I make just one additional
12 comment -- well, actually, two, Your Honor?

13 THE COURT: Yes. Sure.

14 MR. MCELWEE: First of all, I hope the Court
15 understands that Delphi's papers are full of representations
16 that it is now pressing the twenty-five million dollar claim as
17 part of this case.

18 THE COURT: I didn't see that.

19 MR. MCELWEE: If that's not true, then that's fine.

20 THE COURT: I just didn't see that. I really don't
21 see it in their papers. In any event, it's not.

22 MR. MCELWEE: The other issue we are now going to
23 have two cases involving the same substantive breach argument,
24 one pending in New York and one pending in Michigan which is
25 going to involve a res judicata. The question is which court

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1 is going to get to a judgment first and therefore which court's
2 judgment will be res judicata from the other -- there are lots
3 of comity reasons why that kind of proceeding is not favored
4 under American law.

5 THE COURT: Well, you don't believe that your claim
6 is a compulsory counterclaim for breach?

7 MR. MCELWEE: Not under Michigan's purpose --

8 THE COURT: No? Okay. All right. I have a motion
9 before me by Furukawa Electric North America APD. and Furukawa
10 Electric Company Ltd. for abstention on both a mandatory and
11 alternatively a discretionary basis. And in addition, for
12 relief from the automatic stay for cause under Section
13 362(d)(1) to permit Furukawa to be sued in a pre-petition state
14 court action and, I gather, to permit Furukawa to raise a
15 counterclaim in that action. And finally, for an order
16 "limiting the scope of the claim objection hearing" scheduled
17 by the debtors previously in the case.

18 The movant Furukawa appears at oral argument to have
19 abandoned its claim that mandatory abstention is required here
20 under 28 U.S.C. Section 1334(c)(2) but in any event, to be
21 clear, it's not required here because the claim objection is an
22 objection to a filed proof of claim by Furukawa of the two
23 Furukawa entities in this case and as a result, under 28 U.S.C.
24 157(b)(2), that matter, that claim objection is a core matter
25 arising under the Bankruptcy Code and under well-established

1 case law that fact precludes mandatory abstention.

2 Furukawa argued that it should be relieved of that
3 result because it filed its proof of claim as a consequence of
4 the bar date and would otherwise be precluded from filing its
5 breach of contract claim. But that argument is unavailing in
6 light of clear second circuit precedent, including In re S.G.
7 Philips Constructor's, Inc., 45 F.3d 702 (2d Cir. 1995).

8 A clear example of how the filing of the proof of
9 claim changes the abstention analysis can be found in In re
10 Asousa Partnership, A-S-O-U-S-A, 276 BR 55 (Bankruptcy ED
11 Pennsylvania 2002) in which there had been a pre-petition state
12 court law suit based on state court causes of action brought by
13 the debtor. The bankruptcy court consequently abstained.
14 Thereafter, in response to a bar date order, the defendant in
15 that action filed a proof of claim arising out of the same
16 facts and the Court determined because the objection to the
17 proof of claim was a core matter, and indeed the counterclaim
18 was a core matter, that is, the original claim brought by the
19 debtor and now a counterclaim to the proof of claim brought by
20 the debtor was a core matter under 28 U.S.C. 157(b)(3) that it
21 would not abstain as to the adjudication of the claim objection
22 and the related counterclaim.

23 There is an alternative reason for denying the
24 request for mandatory abstention is that is I did not believe
25 that the request is timely made given that the litigation in

1 the state court has been proceeding for well over a year. But
2 more importantly, that as did the claimant in S.G. Philips,
3 Furukuwa here did not seek either state relief or abstention
4 until well after the implementation of the claims procedures
5 put in place by my prior order in this case that we're dealing
6 with this its claim.

7 Furukawa also requests discretionary abstention, also
8 under 28 U.S.C. Section 1334. The Court may exercise its
9 discretion under 1334(c) to abstain on a discretionary basis
10 even in a non-core matter. However, abstention under Section
11 1334(c) (1) should be used rarely or invoked by the Court
12 rarely, particularly where the proceeding is a core matter.
13 Contrary to Furukawa's suggestion in its surreply papers, Judge
14 Lifland didn't invent that notion in his recent opinion in In
15 re Cow Pine Corporation. Rather, it's been well-settled under
16 the law of the southern district. See, for example, In re Rob,
17 139 BR 791 (Bank. S.D.N.Y. 1992).

18 Here where the basis for the request for
19 discretionary abstention under 1334(c) (1) is that there's a
20 pending state court law suit to which Furukawa would join its
21 claim here as a counterclaim. I have considered the factors
22 laid out by the Courts in determining whether one should
23 permissibly abstain, which are also laid out at Judge Lifland's
24 Cow Pine opinion, 2007 WL 39124 at page 3 (Bank. S.D.N.Y.
25 2007). And I concluded that those factors do not support

1 permissive abstention. Obviously, the debtor has to deal with
2 the claims process here in its case. The Court has previously
3 on notice to all claimants adopted claims management procedures
4 to permit the efficient yet fair liquidation of claims asserted
5 against the estate, including Furukawa's claim which is in
6 excess of 2.5 million dollars.

7 And so, therefore, as far as the affect on the estate
8 and the efficient administration of the estate, consistent with
9 this matter being a core proceeding, the bankruptcy court is
10 the proper court for the liquidation of Furukawa's claim.

11 Moreover, other considerations do not support
12 abstaining in light of the action pending in Michigan state
13 court. First, the Michigan action and its flip side, the claim
14 here, do not appear to turn on state law issues that are
15 unsettled as opposed to state law issues that involve the
16 interpretation of contracts and weighing disputed factual
17 assertions as to breach. The Courts in this circuit have
18 focused on the unsettled nature of state law as a primary
19 reason for it deferring to a pending state court action under
20 1334(c)(1). See In re Pan Am Corporation, 950 F.2d 839 (2d
21 Cir. 1991).

22 I do not believe that trying the claim objection will
23 unduly burden the Court's docket. The question of whether the
24 issue of burden is particularly appropriate for me to consider
25 in the first place given that this is a core matter, given that

1 Furukawa filed a proof of claim here, the claim objection can
2 be tried without a jury.

3 And finally, it does not appear to me that the state
4 court action has progressed in any meaningful way and that the
5 only real breakthrough in connection with document exchange
6 occurred as a result of the meet and confer procedures
7 contemplated by my claims management order. I'll also note
8 that that order contemplates, for a claim of this size,
9 mandatory non-binding mediation before trial of the action
10 which is also contemplated under Michigan law. It's clear to
11 me that that mediation would occur promptly here and that if
12 there's any sense of forum shopping, I believe it's on
13 Furukawa's part. Not so much forum shopping but in a sense of
14 desiring to delay both mediation and trial which I believe
15 would ensue as a result of abstention.

16 I also note that Furukawa has presented no evidence
17 that the Michigan action would proceed expeditiously and would
18 determine its counterclaim, its claim here and it's clear there
19 would be a counterclaim in the Michigan action. And it's its
20 burden to do so under Section 1334.

21 So for those reasons, I'll deny the motion to abstain
22 either on a mandatory or permissive basis.

23 As far as the request for limiting the scope of the
24 debtors' claim objection, the request, I think, falls into two
25 categories. The first, I think, was dealt with at oral

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1 argument but let me reiterate. The procedural posture of the
2 claim objection at this point is that it is just that, a claim
3 objection. It may end up having a preclusive affect if tried
4 and decided against either party in respect of any affirmative
5 recovery that the debtor would seek from Furukawa. But at this
6 point it is simply a claim objection. The debtor has the
7 option of joining in that claim objection a request for
8 affirmative relief similar to their request that it made of the
9 Michigan court pre-petition. But I don't believe it has done
10 that yet. If and when it does that, under Rule 3007, that
11 triggers the adversary proceeding rules.

12 Frankly, given the nature of this claim objection
13 itself, I believe and I believe the record on the claim
14 objection procedures motion and the order that ensued from that
15 made this clear as well, that order contemplates that the
16 parties will meet and confer in light of the nature of the
17 objection and the nature of the proof that would be required in
18 the claim objection litigation to modify the discovery and
19 trial procedures laid out in the claim procedures motion -- I'm
20 sorry, the claim procedures order as set forth in paragraph
21 9(k). And that if that exercise were conducted in good faith,
22 the adversary rules would in essence be followed in any event.
23 And if there was no agreement, the parties under the claim
24 objection procedures order could come back to me as well as
25 they can assert rule 3007.

1 The fact that there is a pending state court
2 litigation brought by Delphi has been suggested by Furukawa to
3 mean that there will be a potential for dual track litigation,
4 inefficiency and ultimately contradictory court rulings. I
5 don't believe that is the case. As I noted, Furukawa has yet
6 to assert its counterclaim in the state court litigation. It
7 seeks relief from the automatic stay here to do so. And it's
8 hard for me to see that litigation proceeding without that
9 counterclaim being asserted.

10 Moreover, given the exigencies of this bankruptcy
11 case, which is on a relatively fast track at this point, and
12 the creditors' concern in negotiating the framework for a plan
13 on the prompt liquidation of claims and even the liquidation of
14 claims so that they -- the allowed claims fall within a certain
15 threshold number, it appears likely to me that either the
16 debtor will succeed in withdrawing or staying the Michigan
17 action or withdrawing it without prejudice in light of the
18 process here or that this process will be completed first.

19 In that regard, I do not see a basis on the record
20 before me for lifting the automatic stay to permit Furukawa to
21 raise its counterclaims in litigation in Michigan that the
22 debtor is not pursuing. And I do that for the same reasons
23 that I denied permissive abstention which overlap with the
24 Sonax factors.

25 So, Mr. Berger, you can submit an order denying the

1 motion for those reasons.

2 Okay. So this leaves the omnibus objection?

3 MR. BUTLER: Yes, Your Honor. There are two omnibus
4 objections to deal with in connection with the remaining
5 matters on the agenda. The first of those is matter number 9,
6 the sixteenth omnibus claims objection filed at docket number
7 8271. This related to twenty-six claims. They're either
8 duplicative of other claims or have been amended or superseded
9 by later filed claims or protective in nature.

10 With respect to these claims, Your Honor, the debtors
11 received five timely filed formal responses which covers twenty
12 of the twenty-six claims as a result under the protocol we've
13 been using with respect to these omnibus claims objections.
14 Today we're seeking relief only with respect to the uncontested
15 claims. Those involve six claims asserting liquidated claims
16 of approximately 1.2 million and we are prepared to adjourn the
17 hearing with respect to the twenty claims covered by the five
18 response and put those on the claims track. We filed an
19 omnibus reply with respect to -- and have the charts indicating
20 where those are and I've submitted a proposed order to Your
21 Honor.

22 THE COURT: Okay. Does anyone have anything to say
23 in respect of the sixteenth omnibus claim objection as
24 modified? That is, the relief that's being sought today.
25 Okay, in light of the fact that the debtors are just going